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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,010

04/03/2004

Gordon Walker Nugent

1590

7590
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Wilton, CT 06897-3611

03/22/2007

EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/817,010

Applicant(s)

NUGENT, GORDON WALKER

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 66-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 66-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Feb 27, 2007 has been entered.

Status of Claims

2. Claims 66-77 are pending, with previously pending claims 1-65 all being canceled.

Claim Rejections - 35 USC § 112

3. Claims 66-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 66 and 74, the terms "the cart's virtual axle" and "the cart's wheel track" lack a clear antecedent basis. Further (in both claim 66 and 74), it is not clear what a "virtual" axle is intended to refer to. In claim 68, line 5; claim 72, line 5; and claim 76, line 5, the scope of "various impregnated and laminated..." is not clear, in that the bounds associated with "various" are not set forth; in claim 70, line 5, it is not clear whether or not an un-recited element necessary for a complete definition is missing from the recitation: the claim recites "means of partial support" but fails to specifically recite a means which provides a remainder of support (or, alternatively, it is not clear whether or not the burdens are intended to be supported by the elements recited in the claim); In claim 74, lines 12-13, the recitation of a telescoping spine appears to contradict the recitation of folding of the cart.

Claim Rejections 35 USC §103

4. The portions of 35 USC relied upon herein may be found cited in a previous office action.

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5. Claims 66-77 are rejected as being unpatentable over Raichlen (US 6,540,242) in view of Watson (US 6,394,471, cited previously) Raichlen teaches a metallic-tube hand truck cart (10) which may be used with loads ("A" and "B"- note from the discussion of Prior Art in Raichlen that the accommodation of containers is deemed to be a very common use), including a quick attach/detach lock (19) based on a sliding/pivot mechanism (see figure 6), which co-acts with a ledge (13) having a width which is approximately half its length, and which serves as a partial support, as best understood to loads of greater width and/or length, which can be used to move merchandise from a shopping establishment to a vehicle and throughout a user's residence, the cart including a spine portion (17, 18) having a telescoping portion (compare figure 8a, 8c) allowing more compact storage of the cart, the spine portion further including a hinge portion (31, 32, 33, 34) allowing compact folding.

As regards claims 66 and 74, the reference to Raichlen fails to teach the width of the ledge portion (13) as being about one-half the distance of the wheel-track. It is well known in the manufacturing arts to re-size an already-taught object, for example to change its weight or area of coverage, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to change the width of the ledge (13) taught by Raichlen to be about half the wheel track for the purpose of (a) accommodating a smaller load or (b) incrementally reducing the weight of the cart by reducing the material used in the ledge.

As regards claims 66, 70, 74, the reference to Raichlen fails to teach (a) the provision of plural ledges and lock elements and (b) the use of a particular container structure. Watson teaches a carrier which can accommodate a plurality of baskets (31, 32, 33) having hinged ends, each separately supported on a load support (18, 20, 22). It would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate the ledge and lock structure taught by Raichlen, as suggested by the plural load accommodation taught by Watson, for the purpose of allowing a user to move more than a single load at one time.

As regards claims 68, 72 and 76, the reference to Raichlen fails to explicitly teach the metallic tubing to be a "light alloy", to the breadth such is actually recited in

the claims, however the examiner notes that nearly every metallic structural element is an alloy to the breadth claimed, and inasmuch as aluminum, for example, is notoriously old and well known for the construction of carts, and a comparatively light material, it would have been obvious to one of ordinary skill in the art at the time of the invention to use an aluminum alloy for the purpose of constructing a lightweight yet strong cart.

As regards claims 66, 70, 74, the reference to Raichlen fails to teach the provision of plural ledges and lock elements and as regards claims 69, 73, and 77, the use of a particular container structure. Watson teaches a carrier which can accommodate a plurality of baskets (31, 32, 33) having hinged ends, each separately supported on a load support (18, 20, 22). It would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate the ledge and lock structure taught by Raichlen, as suggested by the plural load accommodation taught by Watson, for the purpose of allowing a user to move more than a single load at one time.

Response to Comments

6. Applicant's comments concerning the references submitted in the supplemental Information Disclosure Statement are noted with appreciation. Initially, as regards the claims, the examiner notes that applicant has not identified the claims associated with the elected species as required by the restriction requirement of Feb. 2, 2005.

Additionally, the examiner notes that applicant has not pointed out the patentability of the claims with respect to the applied prior art, as specifically required in 37 CFR

1.111(b), which states:

37 CFR 1.111(b): In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims

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patentably distinguishes them from the references does not comply with the requirements of this section.

Applicant has argued that an unexpected benefit has resulted from the structure claimed. The examiner notes that the height of the load supports, which appears to be directly related to the benefit is not actually recited in the claims. As such, the arguments are not directed to the invention as actually claimed.

Limitations not in the claims

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As regards reading unclaimed limitations from the specification into the claims

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Furthermore, there is no evidence that the use of ledges and supports at a height similar to that of a checkout counter and/or a table has resulted in a result which is unexpected.

Conclusion

7. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618

Handwritten signature of F. Vanaman and date 3/2/07.